

DENNIS MONTGOMERY, et al.,)	3:06-CV-0056-PMP (VPC)
)	
Plaintiffs,)	
)	ORDER
vs.)	
)	
ETREPPID TECHNOLOGIES, LLC., et al.,)	
)	
Defendants.)	
)	

I. Procedural Background

¹The court grants the Montgomery parties' request for judicial notice (#567).

1 current counsel pursuant to 28 U.S.C. § 1927, and/or the court's inherent power, and/or Local Rule IA
2 4-1 (#545). This motion is supported by Mr. Flynn's declaration with exhibits, a timeline, and papers
3 on file in this case, and the search warrant proceeding, case number 3:06-CV-00263.

4 The Montgomery parties seek an order to seal and strike these motions and supporting papers
5 on the grounds that the motions are brought to compromise the Montgomery parties' ability to defend
6 claims alleged against them by eTreppid and to prosecute their own claims. They further contend that
7 the filings improperly use and reveal information Mr. Flynn gained during his representation of the
8 Montgomery parties in violation of Rule 1.9 of the Nevada Rules of Professional Conduct.

9 II. Discussion

10 In *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), the court considered
11 circumstances under which a party may seek to seal judicial records. The court acknowledged that
12 "[u]nless a particular court record is one 'traditionally kept secret,' [such as grand jury transcripts and
13 pre-indictment warrant materials], a 'strong presumption in favor of access' is the starting point." *Id.* at
14 1178 (citing *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). The party asking to seal a
15 judicial record bears the burden of overcoming this strong presumption. *Id.* However, the court noted
16 that in prior decisions, it had made a distinction between documents attached to a non-dispositive motion
17 and had concluded that because the public has less of a need to access such records, the "good cause"
18 standard under Fed.R.Civ.P. 26(c) will "suffice [] to warrant preserving the secrecy of sealed discovery
19 materials attached to non-dispositive motions." *Id.* at 1180, (quoting *Foltz v. State Farm Auto.*
20 *Insurance Company*, 331 F.3d 1122, 1135(9th Cir. 2003)). The court finds that the disputed motions –
21 Mr. Flynn's motion to establish procedures and his motion for sanctions – are non-dispositive motions
22 and, therefore, subject to the "good cause" showing under Rule 26(c).

23 The court has reviewed the disputed papers and finds that good cause exists to seal the motions
24 and accompanying documents filed by Mr. Flynn. However, the court will not strike the documents at
25 this time.

III. Conclusion

1. The Clerk of Court will seal docket numbers 540, 545, 546, 547, 548, 550, 551, 552, 553, 554, 555, 556, 557, 566, 567, 568, 571, 574, 585, 587, 588, 589, 593, 595, 596, 597, 598, 599, 600, 601, 602, 603, 605, 610, 613, 614, 620, 621, 622, 623, 624, 625, 632, 633, 635, 637, 638, 649, 661, 680, 698, and 714, and shall restrict access to these documents to the court only pending further order of this court;
2. In the event Mr. Flynn, Ms. Dimare, or counsel for the Montgomery parties do not have hard copies of these documents, they may seek leave of court to obtain copies;
3. Counsel for the remaining parties to this action may retain their copies of these documents, but shall henceforth treat these documents as “attorney’s eyes only,” and;
4. While the subject motions are under submission to this court, no other party to this action or their counsel shall use any information contained in the sealed papers in any proceedings pending before this court, or for any other purpose.

IT IS SO ORDERED.

Valerie P. Cooke